

Market Conduct Examination Report

of

NEW YORK LIFE INSURANCE COMPANY

51 MADISON AVENUE

NEW YORK, NEW YORK 10010

and

NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION

200 CONTINENTAL DRIVE

NEWARK, DELEWARE 19713

As of December 31, 1996

By

Washington State Office of the Insurance Commissioner



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August 29, 2001

The Honorable Mike Kreidler
Washington State Insurance Commissioner
Insurance Building
P.O. Box 40255
Olympia, Washington 98504

Dear Commissioner Kreidler:

Pursuant to your instructions and in compliance with the statutory requirements of RCW 48.03.010 and procedures promulgated by the National Association of Insurance Commissioners (NAIC) and the Office of the Insurance Commissioner (OIC), an examination of the market conduct affairs has been performed of:

New York Life Insurance Company, NAIC #66915
51 Madison Avenue
New York, NY 10010

And

New York Life Insurance & Annuity Corporation, NAIC #91596
200 Continental Drive
Newark, DE 19713

hereafter referred to as "the Companies". This report of examination is respectfully submitted.

This was a target examination covering the period of January 1, 1992 through December 31, 1996. It focused on marketing and sales practices and related activities during the examination time period.

CHIEF EXAMINER'S REPORT CERTIFICATION and ACKNOWLEDGEMENTS

This examination was conducted in accordance with Office of the Insurance Commissioner and National Association of Insurance Commissioners market conduct examination procedures. Nancy Barnes, AIE, of the Washington State Office of the Insurance Commissioner performed this examination and participated in the preparation of this report.

The examiner wishes to express appreciation for the courtesy and cooperation extended by the personnel, especially Randi J. Bader, of New York Life Insurance Company and New York Life Insurance & Annuity Corporation during the course of this market conduct examination.

I certify that the following is the report of the examination, that I have reviewed this report in conjunction with pertinent examination work papers, that this report meets the provisions for such reports prescribed by the Office of the Insurance Commissioner, and that this report is true and correct to the best of my knowledge and belief.

Leslie A. Krier, AIE, FLMI
Chief Market Conduct Examiner
Office of the Insurance Commissioner
State of Washington

FOREWORD

This market conduct examination report is by exception and additional practices, procedures, and files subject to review during the examination were omitted from the report if no improprieties were indicated. Throughout the report, where cited, RCW refers to the Revised Code of Washington, and WAC refers to Washington Administrative Code.

Scope

Time Frame

The examination covered the company's operations from January 1, 1992 through December 31, 1996. It was performed as a desk audit in the offices of the OIC in Seattle, Washington.

Matters Examined

The examination included a review of the following areas:

- Marketing and Sales Practices
- Agent Activity
- Complaints
- Replacement Activity

Sampling Standards

Methodology

In general, the sample for each test utilized in this examination falls within the following guidelines:

92 %	Confidence Level
+/- 5 %	Mathematical Tolerance.

These are the guidelines prescribed by the National Association of Insurance Commissioners in the Market Conduct Examiners Handbook.

Regulatory Standards

Samples are tested for compliance with standards established by the OIC. The tests applied to sampled data will result in an error ratio, which determines whether or not a standard is met. If the error ratio found in the sample is, generally, less than 5%, the standard will be considered as "met." The standard in the area of agent licensing and appointment will not be met if any violation is identified. The standard in the area of

filed rates and forms will not be met if any violation is identified. This will also apply when all records are examined, in lieu of a sample.

For those standards, which look for the existence of written procedures, or a process to be in place, the standard will be met based on the examiner's analysis of those procedures or processes. The analysis will include a determination of whether or not the company follows established procedures.

HISTORY, TERRITORY OF OPERATIONS, MANAGEMENT

New York Life Insurance Company (NYL) was admitted to the State of Washington on July 1, 1958. It's subsidiary, New York Life Insurance and Annuity Corporation (NYLIAC), was admitted to the State of Washington on July 28, 1981. NYL is a mutual insurer owned by its policyholders. NYLIAC is a stock company. NYL was originally incorporated as Nautilus Insurance Company in 1841, adopting its current name in 1849. NYLIAC was originally incorporated in 1980.

The Companies are licensed for life and disability insurance in Washington and have authority to sell Life, Disability, Variable Life, and Variable Annuities. As of December 31, 1996, the total premium volume in Washington was \$129,455,708. NYL had 554 active agents in the State of Washington. NYLIAC had 454 active agents in the State of Washington.

A Board of Directors governs the Company and the current Board members for New York Life are:

Betty C. Alewine
Gary G. Benanav
William Gilbert Burns
Kent Benard Foster
Richard Michael Kernan Jr.
Richard Roy Pivrotto
Sy Sternberg

Robert Montague Baylis
James Lowell Broadhead
Patricia Theresa Carbine
Conrad Kenneth Harper
Leslie Gladstone McCraw Jr.
Frederick James Sievert

Administrative functions of NYL and NYLIAC are handled at the Companies' home office in New York, New York. Administrative functions are also handled at the Companies' Service Centers and General Offices. The Companies' policy records are stored at the Companies' Clinton facility in Lebanon, New Jersey. Claims files are also stored at a third party vendor site in Poughkeepsie, New York. Policy record and claim files are stored in paper files and all post-issue documents are scanned and filed via imaging technology.

MARKETING PLAN

The Companies were only able to locate documentation relating to marketing plans for years 1992 and 1996. The Companies informed the examiner that no responsive documents could be located for the years 1993, 1994, or 1995.

The marketing plans for 1992 and 1996 were reviewed. The reports reflect the Companies' goals for the respective years. The plans encompass corporate goals, strategic business plans, compliance, competition in the marketplace, and operational

priorities. The plans did not contain any references to vanishing premiums, replacement programs, exchange programs, or any other indicators that could be construed as possible churning activities.

STANDARD (1):

Marketing plans contain no references to vanishing premium policies, replacement programs, exchange programs or other indicators or possible churning activities.

RESULTS:

As only two of the five years of marketing plans were provided, the Companies did not meet this standard.

AGENT PRODUCED MATERIAL

The Companies' agents are allowed to produce their own advertising material. However, all agent-generated materials must be approved by the Sales Material Review Unit of the Corporate Compliance Department prior to use. The Companies provided a flowchart of the approval process. This process is as follows:

- The agent completes a tracking form and attaches it to the advertising document
- The general office managing partner screens the document
- The Sales Material Review Unit evaluates the document and makes a determination of approval/disapproval and returns the document to the general office
- The general office forwards the document to the agent with an approval or disapproval
- If the document is disapproved, the agent may resubmit it after revisions

STANDARD (2):

All agent or outside produced training materials are controlled by the Companies and the Companies actively audit use of these materials.

RESULTS:

The Companies meet this standard.

AUDITS OF AGENT ACTIVITIES

The Companies monitor and review the sales and marketing practices relative to the sale of its life and annuity products at a number of different levels.

The Compliance Review Division plays a major role in monitoring and reviewing sales and marketing practices as a part of general office operations. The review consists of six general phases:

- Ongoing Surveillance

- Risk Assessment
- Preparation
- The Visit
- Communication of Findings
- Followup

Data is collected and updated quarterly by the Market Surveillance Unit. This data is used to highlight potential risk areas for offices and for individual agents. The factors included are complaints, policy reversals, replacement volumes, negative ledger balances, and highly loaned client portfolios. Offices are scheduled for visits based on the surveillance data, risks identified for the office and its agents from prior reviews, specific requests from other areas of the Companies, and the time frame since the last visit. Occasionally, unannounced visits are conducted either to address specific high-risk concerns or as part of an effort to raise consciousness of compliance-related issues.

Once an office has been selected and scheduled for review, a review team is assigned to assess the various risk factors that need to be addressed. Visits are typically scheduled for a one-week period. The visits include interviews with each member of the management team, including the managing partner, sales manager, trainer, and office manager, as well as meeting with agents associated with the general office. Agents may also be selected for interview based on specific risk factors determined or as part of an effort to assess the training and supervisory processes. Additionally, the general office management may request that a particular agent be selected for interview based on concerns that they might have. The goal of the visits is to raise awareness of compliance risks and recommend specific corrective actions. A formal report is prepared at the end of each visit. The report contains observations and recommendations of the compliance review team as well as an action plan to address risk areas. Recommendations are followed up formally on a semi-annual basis.

The Agency Department, through the Zone Agency Standards Office, also monitors and reviews sales and marketing practices through annual visits to general offices. A percentage of these visits are unannounced. The Agency Standards Office Review includes review of:

- The general office complaint log
- Agent replacement activity
- Individual agent compliance files
- Recruiting materials to ensure only Company-approved materials are used
- Disciplinary procedures
- Specific agents exhibiting risk factors

The Companies provided the examiners with copies of two audits. The audit completed February 12, 1993 encompassed 13 general offices, including Seattle. The comments in the formal report are unremarkable. The Puget Sound General Office was audited in

1995. Several topics were addressed in the audit. The most notable concern was the processing of new business applications that involved replacement and meeting the state-mandated three-day notification requirement. Problems with meeting this requirement were attributed to staffing changes. General office management and the Compliance Review Department both agreed that these problems had been effectively corrected.

Subsequent event: Beginning September 1, 1997, the Companies introduced an annual unannounced interview/inspection by general office management. The topics covered during the interview/inspection include:

- *Sales promotion and advertising*
- *Sales practices*
- *Business practices*
- *Remittance handling*
- *Licensing*
- *Customer complaints, litigation, and legal proceedings*

STANDARD (3):

The Companies conduct regular audits of agent activities through regular branch or agency office audits and visits.

RESULTS:

The Companies meet this standard.

AGENT CONTRACTS AND COMMISSION SCHEDULES

The agent contracts and commission schedules were reviewed as part of the examination. The contracts and commission schedules contain typical agent contract language outlining the agent's scope of authority to act on behalf of the Companies and commission schedules for business written.

Neither the agent's contracts nor their commission schedules contain deceptive language or incentives that would encourage internal replacements. The Company has clearly defined commission rules regarding replacements. A replacement is any transaction in which a NYL or NYLIAC policy or rider covering the same insured is surrendered, foreclosed, or placed on extended term or reduced paid-up insurance from three (3) months before and up to six (6) months after a new sale. Commissions on policies that have been determined by the Companies to be replacements will be payable according to the Companies' rules. If the Companies determine after issue that a policy replaced an existing policy, the agent is required to repay the commission.

STANDARD (4):

Agent contracts and commission schedules do not contain language that encourages internal replacements.

RESULTS:

The Companies meet this standard.

COMPLAINT HANDLING PROCEDURES

The Companies have complaint handling procedures and a company complaint log. The Complaint Review Unit (CRU) of the Corporate Compliance Department has overall responsibility for ensuring that all customer and regulator complaints are properly recorded and resolved. The company gives this area a high priority and ensures that each complaint is handled in an expeditious manner.

There was no evidence of unfair treatment of policyholders or claimants, or any pattern of activity, which would, indicate an unfair trade practice.

STANDARD (5):

The Companies have and follow written complaint handling procedures.

RESULTS:

The Companies meet this standard.

The Companies use various forms for tracking and monitoring purposes, depending on the type and origin of the complaint.

Statistical data from the Companies complaint logs is used to identify areas where problems exist which could become costly or serious. The Companies' complaint procedures state that this data is used to "refine our methods of operation."

STANDARD (6):

The Companies monitor complaint records for trends and have a formal procedure for reporting trends to management.

RESULTS:

The Companies meet this standard.

The examiner reviewed the Companies' complaint log. The total number of complaints by year were as follows:

1992	1993	1994	1995	1996
72	53	112	100	88

Twenty-three (23) files that pertained to Marketing and Sales were reviewed. The Companies acknowledge receipt of an OIC complaint within 15 business days. However, the standard response letter to the OIC states that the Companies are reviewing the matter and will respond as soon as their review is complete. This type of the reply to the OIC is inadequate and is in violation of WAC 284-30-650. Responses to

the OIC must address every issue in the inquiry and include documentation to support the position of the Companies.

STANDARD (7):

The Companies respond to the Office of Insurance Commissioner complaints within 15 business days as required by WAC 284-30-650. (See Appendix 1)

Total Population:	425
Sample Size:	23
# Of Violations:	4
Percentage of Violations:	17.4% (Outside 5% tolerance)

RESULTS:

The Companies did not meet this standard.

Subsequent Event: In June 1997, new procedures were implemented in the Corporate Compliance Department to ensure timely responses to complaints. When a complaint is received from a state insurance department, the Complaint Review Unit consultant enters the complaint information into the Companies' complaint tracking system, including the due date of the response. If a due date cannot be met, the consultant contacts the state insurance department in advance of the due date and requests an extension. A fax is sent to the insurance department examiner confirming the extension. A report of open cases with due dates is run daily. The Complaint Review Supervisors meet each morning to review the report. These supervisors are responsible for ensuring that the consultants meet the due dates.

DISCIPLINARY PROCEDURES

The Companies maintain written procedures for agent disciplinary actions. The procedures provide guidance to the management teams. The disciplinary action process consists of four levels of discipline:

- Verbal Warning
- Letter of Reprimand
- Last Chance Reprimand
- Termination

Charts are included in the procedures that outline:

- The levels of discipline
- Penalties and sanctions that can be prescribed
- Mitigating factors that should be considered when prescribing an action
- Examples of types of conduct that could result in disciplinary actions

The guidelines are designed to familiarize field management with the types of misconduct that occur in the field and to assist management in deciding upon appropriate remedial actions.

The examiners requested five (5) agent disciplinary files for review. Two (2) files were provided by the Companies. The Companies could not locate three (3) of the requested files. Of these three (3) files, one (1) agent is deceased, one (1) was terminated by the Companies in 1997, and one (1) voluntarily terminated his appointments with the Companies in 1993. Based on the two (2) files that were reviewed, the Companies adhere to their written procedures and the disciplinary files are adequately documented.

STANDARD (8):

The Companies have and follow written procedures for disciplining agents and these actions are documented.

RESULTS:

The Companies meet this standard.

REPLACEMENT ACTIVITY

The Office of Insurance Commissioner is charged with the responsibility and enforcement of WAC 284-23-400 through WAC 284-23-485. The purpose of this regulation is:

- (1) To regulate the activities of insurers and agents and brokers with respect to the replacement of existing life insurance and annuities;
- (2) To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transactions by:
 - (a) Assuring that the purchaser receives information with which a decision can be made in his or her own best interest;
 - (b) Reducing the opportunity for misrepresentation and incomplete disclosures; and
 - (c) Establishing penalties for failure to comply with the requirements of this regulation.

The Companies have documented replacement procedures that were reviewed for accuracy, adherence to the Companies' guidelines, and compliance with Washington statutes and rules. The Companies have written replacement procedures that are consistent with Washington replacement regulations. Copies of replacement forms in use during the examination period were also provided. The forms are all correct and as prescribed by Washington replacement regulations.

The Companies replacement log contained 5,234 entries during the exam period. Fifty-four (54) were randomly selected for review. One (1) file selected in the sample was actually written on a Minnesota resident and signed in Minnesota, leaving 53 files that

were reviewed for compliance. The 53 files included 17 external replacements and 36 internal replacements.

STANDARD (9):

The Company processes replacements in accordance with the Washington replacement regulations, WAC 284-23-400 through WAC 284-23-485. (Specific violations are noted in Appendix 2.)

Code	Total Population	Sample Size	# of Violations	Percentage in Violation
WAC 284-23-450(2)	5,234	53	2	3.8%
WAC 284-23-455(1)	5,234	53	2	3.8%
WAC 284-23-455(2)(a)(ii)	5,234	53	2	3.8%
WAC 284-23-455(2)(b) – External replacements only	5,234	17	3	17.6%

RESULTS:

The Companies did not meet this standard.

Subsequent Events: On February 22, 1999, the Agency Standards Department communicated with agents in Washington by means of a Field News (Companies' communication to agents) regarding the proper completion of the Washington replacement notifications "Important Notice Regarding Replacement of Insurance."

In May 1999, the Agency Standards Department provided all agents in all jurisdictions with a CD entitled "State Replacement Requirements." This CD lists the replacement requirements in all states and included printable state disclosure forms. A Field News dated 5/3/99 introduced the CD and reinforced state replacement requirements.

A new corporate disclosure requirement, Form 22190, became effective April 1, 2001. This form is required with all life insurance and annuity applications in all jurisdictions, in addition to the Washington replacement form.

Monitoring Replacement Activity

NOTE: No legal limit exists stating the number of replacements an agent may write. However, replacements should be monitored by the companies to guard against excessive replacement, or churning. The threshold of "greater than 1 per month" is used in this section of the examination solely for the purpose of testing company oversight procedures.

Forty-nine (49) agents wrote 53 cases in the random sample. The examiners noted no excessive replacement activity by any of these agents.

STANDARD (10):

Number of replacements for any one agent in any calendar year should not be significant (>1 per month, combined internal and external replacements).

RESULTS:

The Companies meet this standard.

The internal audit procedures in place for sales and marketing practices contain a review of both admitted and non-admitted replacement activity. Replacements are monitored by the Market Surveillance Unit. If the information gathered shows excessive replacement activity, the case is sent to the Compliance Review Division for action.

STANDARD (11):

The Companies have identified patterns of replacement by individual agents such as moving policies in and out of the Companies at regular intervals, replacement of large blocks of business, moving funds from one policy to another.

RESULTS:

The Companies meet this standard.

Subsequent Events: The Companies implemented a new monitoring system for internal replacement events in September 2000. The Corporate Compliance Department now has the ability to produce "exception reports" of agents with high levels of replacement activity. These reports are used by Zone and General Office field management as part of their supervisory responsibilities.

In addition, a new suitability test for variable life insurance and variable annuities was implemented in November 2000. This test allows the broker-dealer the opportunity to evaluate specific replacement events at the time of application where there is an appearance that the new sale will expose the customer to significant surrender charges on the source of funds product. The result of the evaluation is either acceptance or declination of the new business for suitability reasons.

Since 1997, the current curriculum for new agent training includes a class on Ethics, Best Business Practices and Company Policies. In 2000 and 2001, the Companies Agency Training program and materials were enhanced to include detailed training on replacement requirements. This training is mandatory for newly licensed registered representatives.

AGENT APPOINTMENTS AND LICENSING

The Companies have documented licensing and appointment procedures that were reviewed for accuracy, adherence to the Companies' guidelines, and compliance with Washington statutes and rules.

A review of 53 policy files was performed in conjunction with review of replacement activity. Agent appointments were compared against the actual application date to determine if the agent was licensed and properly appointed prior to soliciting business. It was determined that one (1) agent was not licensed in Washington or appointed with the Companies when one (1) policy was written. Appendix (3) contains the violation for this section.

STANDARD (12):

Agents representing the Companies have been licensed and appointed prior to soliciting applications on behalf of the Companies as required by RCW 48.17.160(1) and RCW 48.17.060. The standard is not met if there are any violations of either requirement.

Population	Sample Size	Number of Exceptions	Percentage to Sample
5,234	53	1	1.9%

RESULTS:

The Companies did not meet this standard.

Subsequent Event: The Companies have taken actions since the examination period to improve compliance with Washington's agent licensing requirements. These actions include both use of computer technology and manual reviews. NYL uses various websites and software available to verify all state license and appointment information. Internal procedures include review of periodic reports from insurance departments to assure that company records are consistent with those of the various state insurance departments. Any formal written notification received from an insurance department regarding the cancellation of an agent's license is recorded on the Companies' database, and all appointments are canceled on the date of receipt. This measure blocks any new business from being processed through the Companies' new business system from the suspended producer. All new business is validated through the Companies' system to ensure that all writing and/or sharing producers are properly licensed and that they hold a valid contract for the product being sold.

The examiners were provided with a log that listed all disciplinary actions taken by the Companies during the examination period. There were 76 disciplinary actions taken by the Companies. One (1) resulted in termination of an agent for cause and is in agreement with OIC records.

STANDARD (13):

All agents that have been terminated for cause by the Companies have been reported terminated to the Office of Insurance Commissioner.

RESULTS:

The Companies meet this standard.

INSTRUCTIONS

1. The Companies are instructed to respond to complaints from the OIC within 15 business days with complete documentation as required by WAC 284-30-650 and Technical Assistance Advisory T 98-4. (Page 12)
2. The Companies are instructed to send to each existing insurer a timely written communication advising of the replacement or proposed replacement. This written communication shall be in accordance with WAC 284-23-455(2)(b) and shall be retained in the policy files. (Page 14)
3. The Companies are instructed to comply with RCW 48.17.160(1)(2) and RCW 48.17.060 to ensure that all agents and brokers are properly licensed and appointed in the state prior to soliciting on behalf of the Companies (Page 16)

APPENDIX 1

COMPLAINTS

VIOLATION OF WAC 284-30-650 (15 Business Day Response to the OIC)

Complaint File #	Received by Company	Response to OIC	Business Days from Receipt to Response
75092	5/11/92	6/10/92	22
94292	6/16/92	7/31/92	33
352895	8/22/95	9/14/95	16
165193	10/28/93	12/3/93	26

APPENDIX 2

INCOMPLETE REPLACEMENT REQUIREMENTS

VIOLATION OF WAC-284-23-450(2) **(Require statement signed by applicant)**

POLICY NUMBER	APPLICATION DATE	COMMENTS
45705007	Unknown	Company could not locate application file
44991429	Unknown	Company could not locate application file

VIOLATION OF WAC-284-23-455(1) **(Require statement signed by agent)**

POLICY NUMBER	APPLICATION DATE	COMMENTS
45705007	Unknown	Company could not locate application file
44991429	Unknown	Company could not locate application file

VIOLATION OF WAC-284-23-455(2)(a)(ii) **(Company to require replacement notice with application)**

POLICY NUMBER	APPLICATION DATE	REPLACEMENT NOTICE DATE/COMMENTS
45912017	10/25/96	Company could not locate replacement form
45705007	Unknown	Unknown – Company could not locate application file

VIOLATION OF WAC-284-23-455(2)(b)

(Company to send notification to existing carrier within 3 business days)

POLICY NUMBER	DATE APPLICATION RECEIVED	REPLACEMENT NOTIFICATION TO EXISTING COMPANY/COMMENTS
45912017	10/31/96	Company could not locate replacement documents
45705007	Unknown	Unknown – Company could not locate application file
45447854	2/23/95	Letter to existing carrier could not be located

APPENDIX 3

AGENTS NOT LICENSED IN WASHINGTON

VIOLATION OF RCW 48.17.010 and RCW 48.17.160(1)

POLICY NUMBER	DATE OF APPLICATION	AGENT	LICENSING DATA
44510514	3/3/92	Albert Ray Linker Jr.	Agent was licensed 5/13/92 and appointed 5/18/92